

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LES'LEIGH DAVENPORT,)	
)	
Petitioner)	
)	
v.)	Civil No. 98-9-P-C
)	
SHERIFF, LINCOLN COUNTY,)	
)	
Respondent)	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

The *pro se* petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in connection with his detention in the Lincoln County jail pursuant to a pending charge of probation violation in *State of Texas v. James Edward Poe*,¹ Docket No. F94-26752-T, 283rd Judicial District Court, Dallas County, Texas. Although it is difficult to discern the basis for the petitioner's claim, he apparently contends that he should have been immediately arraigned in Maine on the Texas charge when he was arrested on a Maine charge and that he should have been provided with counsel at state expense regarding the Texas probation violation. He also contests the validity of the underlying Texas conviction. I recommend that the court deny the petition.

I. Background

¹ The petitioner states that he "legally changed his name" from James E. Poe to Les'Leigh R. Davenport in 1995. Response to Defendant's Answer ("Petitioner's Response") (Docket No. 9) at 2.

The petitioner was arrested in New York City on May 10, 1997. Petition (Docket No. 2) at 5. He was informed at this time that charges were pending against him in Maine for theft by deception and in Texas for violation of probation. Petitioner's Response at 5; Transcript, *People v. Les' Leigh Davenport*, Docket No. 97N47898 & 97N047898A, May 11, 1997, Criminal Court of the State of New York, County of New York, attached to Response to Petition for Writ of Habeas Corpus ("Response") (Docket No. 7), at 2. The petitioner waived extradition to Maine. Waiver of Warrant of Extradition, Docket No. 97N047898, Criminal Court of the City of New York, June 12, 1997, attached to Response. The petitioner was returned to Maine and bail was set at \$250,000 with double sureties or 50% cash. Docket, *State v. Les Leigh Davenport*, Docket No. 97-01276, District Court, Division of Bath-Brunswick, attached to Response. He was ordered committed for failure to furnish bail. *Id.*

On July 11, 1997 the petitioner filed in the Maine District Court a "Notice of Speedy Trial on Out of State Warrants Pursuant to the Interstate Agreement on Detainers." *Id.* The current petition was filed on January 13, 1998 and supplemented by a filing on February 9, 1998. The petition asserts three grounds for relief. One is entitled "Violation of Due Process — Speedy Trial — violation of Detainer Agreement" and asserts that the petitioner was "never brought before court" on the Texas probation violation charge. Petition at 5. The second ground is entitled "Conviction obtained by Plea of Guilty which was unlawfully induced and not made with the understanding of the charge" and refers to the underlying Texas charge upon which probation was imposed. *Id.* The third ground is entitled "Due Process" and asserts, in its entirety, "I have been moved from county to county and State to State, and have Been denied the Right of Due Process on the Texas warrant & detainer." *Id.* at 6. The subsequently filed material (Docket No. 6) includes eight stated grounds,

none identical to those stated in the petition. While incarcerated in Maine, the petitioner was arrested on a Texas warrant arising out of the charge of violation of probation. Petitioner's Response at 9.

On February 12, 1998 the petitioner pleaded guilty via a plea agreement to two charges of negotiating a worthless instrument in violation of 17-A M.R.S.A. § 708(1)(3-A) and (4)(C). Judgments and Commitments, *State v. James E. Poe a/k/a/ Lesleigh Davenport*, Docket Nos. CR-98-062 and CR-98-061, Maine Superior Court (Lincoln County), attached to letter from Charles K. Leadbetter, Assistant Attorney General, to William S. Brownell, Clerk, United States District Court, dated February 13, 1998 ("Letter") and Letter (Docket No. 8), for which he was sentenced to concurrent terms of imprisonment that coincided with the number of days he had been detained awaiting disposition of the original Maine charge, which was dismissed, Dismissal, *State v. Lesleigh Davenport a/k/a James E. Poe*, Docket No. CR 97-271, Maine Superior Court (Lincoln County), attached to Letter. The petitioner is currently in custody solely as a result of his failure to post bail on the Texas warrant, which was set in the Maine District Court at \$20,000 (one surety) or \$2,000 cash. Letter.

II. Analysis

The respondent notes that the Interstate Agreement on Detainers does not apply to the petitioner's situation because the Texas warrant for his arrest is based solely on a charge of probation violation. A probation-violation charge does not come within the terms of the Interstate Agreement on Detainers. *Carchman v. Nash*, 473 U.S. 716, 725 (1985). The petitioner must thus look elsewhere to establish that he "is in custody in violation of the Constitution or laws or treaties of the

United States.” 28 U.S.C. § 2254(a).

The petitioner does not indicate whether he has waived extradition to Texas since his arrest in Maine on the Texas warrant. If he has not done so, Texas will be able to secure his presence only through use of the Uniform Criminal Extradition Act, 15 M.R.S.A. §§ 201-29 and Vernon’s Ann. Texas C.C.P. Art 51.13. A claim that these state statutes have been violated, or that Maine’s Rules of Criminal Procedure have been violated, is not cognizable under section 2254, which applies only to violations of the federal constitution and statutes. *Pulley v. Harris*, 465 U.S. 37, 41 (1984) (federal court may not issue writ of habeas corpus on basis of error of state law). Any delay in resolution of the Texas probation-violation charge caused by the need to employ statutory extradition procedures results from the petitioner’s choice not to waive extradition, and cannot form the basis of a constitutional violation. In addition, petitioner’s incarceration in Maine until February 12, 1998 was pursuant to a Maine sentence duly imposed upon his plea of guilty and, having been fully served, provides no basis for a writ of habeas corpus under section 2254. Any allegations in his petition that may be construed to relate to that period of confinement have been rendered moot.

The remaining ground from the petition is the allegation that the underlying Texas conviction was unlawfully obtained. The respondent argues, without citation to authority, that this attack on his Texas conviction is time barred under Title I of the Antiterrorism and Effective Death Penalty Act of 1996, that the petitioner has failed to exhaust the remedies available to him in the courts of Texas, that the claim is procedurally defaulted under Texas law, and that this claim should be transferred pursuant to 28 U.S.C. § 2241(d) to the federal district court with territorial jurisdiction over the location of the Texas state court in which the conviction was obtained.

The Antiterrorism and Effective Death Penalty Act of 1996 amended 28 U.S.C. § 2244 (d),

effective April 24, 1996, to provide, in relevant part:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review

None of the other alternative dates from which the one-year period is to run is implicated by the petition or the voluminous additional materials filed by the petitioner. This petition was filed on January 13, 1998, well over a year after judgment was entered on March 17, 1995 on the petitioner's guilty plea to the underlying Texas charge. Judgment, *State v. James Edward Poe*, Docket No. F-9426752-UT, 283rd Judicial District, Dallas County, Texas, attached to Response, at [1]. The petitioner states that he did not appeal from this judgment. Petition at 2. Texas requires appeals in criminal cases to be filed within 30 days after the day sentence is imposed or within 90 days after that day if a motion for new trial is filed. Texas Rules of Appellate Procedure, Section Four, Rule 41(b). Therefore, judgment in the petitioner's underlying action must have become final well before January 13, 1997. The petitioner's attack on the validity of this conviction under section 2254 is therefore barred by the statute of limitations imposed by section 2244(d).

III. Conclusion

For the foregoing reasons, I recommend that the petition for a writ of habeas corpus be **DENIED** without a hearing.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 24th day of February, 1998.

*David M. Cohen
United States Magistrate Judge*